

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

UNITED STATES OF AMERICA,

Plaintiff,

v.

ARMANDO CHAVEZ-FLORES,

Defendant.

CRIMINAL ACTION

No. 07-20143-03-CM

ORDER

On August 31, 2009, this court sentenced defendant to a term of 292 months imprisonment. On that same day, defendant filed a Notice of Appeal that he signed himself (Doc. 139). The court's review of PACER, however, shows that the Tenth Circuit has defense counsel Michael Kelly listed as defendant's attorney on appeal. Mr. Kelly then filed a Motion to Withdraw with this court on September 3, 2009 (Doc. 147).

Mr. Kelly's motion is not properly before this court. Tenth Circuit Rules make it clear that this court lacks authority to grant Mr. Kelly's motion. Tenth Circuit Rules 46.1, 46.3, and 46.4 all indicate that an attorney who has entered an appearance with the Tenth Circuit may not withdraw without the Tenth Circuit's permission. It appears that Mr. Kelly attempted to avoid entering an appearance with the Tenth Circuit by having defendant file his own Notice of Appeal. The court does not believe that this strategy relieved Mr. Kelly of his obligation to his client, however. Tenth Circuit Rule 46.3 specifically states:

Trial counsel must continue to represent the defendant until either the time for appeal has elapsed and no appeal has been taken or this court has relieved counsel of that duty. An attorney who files a notice of appeal in a criminal case or a postconviction

proceeding under 28 U.S.C. § 2254 or § 2255 has entered an appearance in this court and may not withdraw without the court's permission.

Mr. Kelly should raise his request with the Tenth Circuit. *See United States v. Montero-Sanchez*, No. 02-20020-01-KHV, 2002 WL 31190131, at *2 (D. Kan. Sept. 18, 2002); *United States v. Telman*, No. 92-40034-03-SAC, 1993 WL 500828, at *2 (D. Kan. Nov. 19, 1993).

IT IS THEREFORE ORDERED that Mr. Kelly's Motion to Withdraw as Counsel (Doc. 147) is denied.

Dated this 16th day of September 2009, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge